

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 51 of 1996

with

SPECIAL CIVIL APPLICATION NO. 53 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No

S.C.A. No. 51 of 1996

LEGAL HEIRS AND REPRESENTATIVES OF DECEASEDD HATHIBHAI BABARBHAI
Versus
LEGAL HEIRS OF DECEASED RAMABHAI KHODABHAI

S.C.A. No. 53 of 1996

LEGAL HEIRS AND REPRESENTATIVES OF DECEASED HATHIBHAI
BABARBHAI
versus
LEGAL HEIRS OF DECEASED PATEL KANTIBHAI SHANABHAI

Appearance:

Shri R.D. Dave, Advocate, for the Petitioners (in
both petitions)

Shri P.M. Bhatt, Advocate, for Respondents Nos.
1/1 & 3/1 (in S.C.A. No. 51 of 1996) and for the
Respondents (in S.C.A. NO. 53 of 1996)

Rest served

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 14/03/96

ORAL JUDGEMENT

The decisions rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on 7th September 1995 in restoration applications are under challenge in these two petitions under articles 226 and 227 of the Constitution of India. Thereby the Tribunal rejected both the restoration applications. A copy of the decision in each case is at Annexure F to Special Civil Application No. 51 of 1996 (the first petition for convenience) and at Annexure E to Special Civil Application No. 53 of 1996 (the second petition for convenience). The petitioners in both the petitions are common. Identical questions of law and fact arise in both these petitions. I have therefore thought it fit to dispose of both these petitions by this common judgment of mine.

2. It is not necessary to set out in detail the facts giving rise to these petitions. It may be sufficient to note that the petitioners herein had preferred two different revisional applications against the order passed by the Deputy Collector in appeal against the order passed by the Mamlatdar and Agricultural Lands Tribunal at Nadiad in some proceeding arising under the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act for brief). Both the aforesaid revisional applications came to be rejected for default of appearance on the part of the learned Advocate for the petitioners by the order passed on 5th April 1995 in each case. The Tribunal was moved separately by two separate restoration applications for restoration of the revisional applications to file. Those restoration applications also came to be rejected for default of appearance on the part of the learned advocate for the petitioners by the order passed on 30th June 1995. Again, the petitioners filed restoration applications for restoration of the aforesaid restoration applications filed earlier. The new restoration applications also came to be rejected by the decision rendered by the Tribunal in each case on 7th September 1995. These two decisions of the Tribunal rejecting restoration applications for default of appearance are sought to be challenged in these two petitions under articles 226 and 227 of the Constitution of India.

3. It appears that the first restoration applications came to be rejected on 30th June 1995. It was the case of the petitioners in the second restoration

applications that their advocate could not remain present on account of his father's indisposition and a telegram for adjournment was sent to the Tribunal. It however appears that before the telegram could reach the Tribunal, it rejected the restoration applications on that very day by its decisions rendered on 30th June 1995. So far as the second restoration applications are concerned, the same were rejected on the ground that the petitioners did not produce any material showing that his father was indisposed on 30th June 1995.

4. I think the Tribunal has taken a very technical view of the matter. It was not the case of the Tribunal that the telegram sent by the learned Advocate for the petitioners seeking adjournment on 30th June 1995 was not received by the Tribunal. Besides, the petitioners were not called upon to produce evidence regarding the sickness of the father of their Advocate. It appears that no affidavit in support of the ground contained in the restoration applications was filed. The petitioners or their advocate could have filed the necessary affidavits if so desired by the Tribunal. The very grounds for remaining absent are reiterated in these petitions. The relevant averments made in these petitions are on solemn affirmation. In that view of the matter, the affidavit in support of the grounds for remaining absent on the previous occasions can be said to have been filed in this case.

5. Learned Advocate Shri Dave for the petitioners has rightly relied on the ruling of this Court in the case of Patel Karshanbhai Dwarkadas v. State of Gujarat reported in 1994(1) 35(1) G.L.R. 810 in support of his submission that the default of appearance on the part of the advocate for the petitioners deserves to be condoned. I think these petitions deserve to be accepted for the reasons recorded hereinabove and in view of the aforesaid ruling of this Court. Learned Advocate Shri Dave for the petitioners states that there will be no default of appearance on the part of the advocate engaged by the petitioners or the petitioners themselves or their representative if no advocate is engaged. If this statement is not honoured, it will be open to the Tribunal to reject the restoration applications sought to be restored by means of these petitions for default of appearance and they will not be restored thereafter.

6. In the result, these petitions are accepted. The decisions rendered by the Tribunal on 7th September 1995 in each case rejecting the restoration applications are quashed and set aside. The restoration applications

rejected by the decision rendered on 7th September 1995 are ordered to be restored to file. The Tribunal will dispose of the restoration applications according to law on their own merits. Rule issued in each petition is therefore made absolute to the aforesaid extent with no order as to costs. The Registry is directed to send the writ in each case as expeditiously as possible but latest by 6th April 1996.
